

To:

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PCT

WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY
(PCT Rule 66)

Date of mailing
(day/month/year) 14 NOV 2005

Applicant's or agent's file reference
13824PC2-PMT/TLA

REPLY DUE within **TWO MONTHS**
from the above date of mailing

International application No.
PCT/AU2004/001774

International filing date (day/month/year)
17 December 2004

Priority date (day/month/year)
17 December 2003

International Patent Classification (IPC) or both national classification and IPC
Int. Cl. ⁷ A01G 9/02, 27/06, B65D 85/52

Applicant

ANOVA SOLUTIONS PTY LTD et al

1. ☒ The written opinion established by the International Searching Authority:

☒ is

☐ is not

considered to be a written opinion of the International Preliminary Examining Authority.

2. This **Second** (second, etc.) opinion contains indications relating to the following items:

☒ Box No. I Basis of the opinion

☐ Box No. II Priority

☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

☐ Box No. IV Lack of unity of invention

☒ Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

☐ Box No. VI Certain documents cited

☐ Box No. VII Certain defects in the international application

☒ Box No. VIII Certain observations on the international application

The applicant is hereby invited to reply to this opinion.

When? See the Reply Due date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the Final Date by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. If no response is filed by 1 month before the Final Date, the international preliminary examination report will be established on the basis of this opinion.

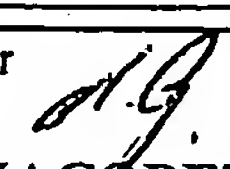
Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least 3 months before the Final Date by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.
For an informal communication with the examiner, see Rule 66.6.

4. The FINAL DATE by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is: 17 April 2006

Name and mailing address of the IPEA/AU
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Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This opinion is based on a translation from the original language into the following language
which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the elements of the international application, this opinion has been established on the basis of (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."*):
- ☐ the international application as originally filed/furnished
- ☒ the description: pages 1-23 as originally filed/furnished
pages , received by this Authority on with the letter of
pages , received by this Authority on with the letter of
- ☒ the claims: pages , as originally filed/furnished
pages , as amended (together with any statement) under Article 19,
pages , received by this Authority on with the letter of
pages 24-27 received by this Authority on 14 October 2005 with the letter of 14 October 2005
- ☒ the drawings: pages 1/9-9/9 as originally filed/furnished
pages , received by this Authority on with the letter of
pages , received by this Authority on with the letter of
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):
4. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):

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Box No. V **Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims 1-33, 37, 38	YES
	Claims 34-36	NO
Inventive step (IS)	Claims 1-33, 37, 38	YES
	Claims 34-36	NO
Industrial applicability (IA)	Claims 1-38	YES
	Claims	NO

Citations and explanations:

Cited Prior Art Documents

D1- FR 2766327 A1	D2- FR 2701808 A1
D3- NL 9001748 A	D4- US 4219967 A
D5- US 4324070 A	D6- JP 8196157 A
D7- GB 2018117 A	D8- WO 1995/010934 A1
D9- US 4287682 A	

NOVELTY(N) AND INVENTIVE STEP(IS): Claims 1-33, 37, 38 (YES)

The invention of amended claim 1 relates to a pot for growing a plant. None of the above documents taken singly or in obvious combination disclose or fairly teach all the essential features of the invention. In particular the closest prior art documents (D1) to (D5) disclose pots with liquid transfer means that would be invaded by roots of a plant and hence these pots do not resist root escape. Hence the invention of claim 1; as well as dependent claims 2 to 33, 37 and 38; is considered to be novel and involve an inventive step. The invention also has industrial applicability.

NOVELTY(N) AND INVENTIVE STEP(IS): Claims 34-36 (NO)

In light of observation in Box VII, the invention of claim 34 is not novel and does not involve an inventive step over the document (D1) to (D5). For example, document (D3)* discloses a flowerpot with a water supplying member (8) wherein the pot has as bottom wall (2) with a liquid transfer arrangement. The arrangement has a tube (9) (ie conduit) that extends into an internal zone of the growth medium (5) and to a "local environment" adjacent the bottom wall and outside the pot (1). The tube contains a water absorbing material (10) (ie material wick) for transferring liquid through the bottom wall. Therefore the features of claim 34 are disclosed in this document and hence the invention is not novel. Further features of claims 35 and 36 are considered to be disclosed and hence do not confer novelty to the invention.

(*Please note D3 has a family equivalent of US 5136806 and should have been cited instead)

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. Claim 1 lacks clarity as there is no prior reference for the phrase "the base wall" (lines 8 and 9). The word "base" should probably be the word "bottom".
2. Independent claim 34 does not fully define the invention described. The added feature of amended claim 1 of the pot being adapted to resist root escape is an essential feature of the invention. However, this feature has not been included within this claim.

The claim also lacks clarity as the intended meaning of the phrase "local environment". It is considered that the zone outside the pot is the "local environment" and in some environments this can include pots being surrounded by water. Therefore the arrangement of a pot being in water is not excluded from the scope of claim 34.